THE SPECULATION IN DAMAGE CLAIMS FOR PERSONAL INJURIES.

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ONE of the most remarkable developments of recent years, a development to which public attention is rarely drawn and which those most interested have naturally endeavored to keep from public view, is the rapid growth of the speculation in damage claims for personal injuries.

This speculation is peculiar to no part of the country, but it thrives most where juries are most liberal and where the courts place least restraint upon them. It is impossible to make any definite comparison in this respect between different portions of the country. For the sake, however, of procuring figures to illustrate the existing situation, and what it promises to become, I have examined the records of the Chicago courts having jurisdiction of these cases and of the courts of appeal throughout the State of Illinois.

The first fact shown from the records of the Chicago courts is that there has been a great increase in the number and size of these suits within the past few years. In 1875 there were altogether about two hundred personal injury suits pending in Cook County. I have not learned the amount of damages claimed in these suits. During the first six months of 1890 the number of these suits brought in Cook County was 346, the total amount of damages claimed being $2,814,860. During the corresponding six months in 1896 the number of such suits begun in Cook County was 893, and the total amount of damages claimed was $13,510,000. It would be reasonable to assume from these figures that there are now pending in Cook County 3,600 of these cases and that the damages claimed are between fifty and sixty millions of dollars.

So much for the claims which are in suit. Everyone of experience in these matters knows that the first effort of defendants in treating these claims is to compromise if possible. For each claim which is brought to suit it is probable that eight or ten claims are settled without suit. Of course, statistics as to settlements cannot be procured, but we are safe in believing that the figures which we get from the records of the courts, enormous as they are, tell not more than half, and probably only a small part, of the story.

The second conspicuous fact disclosed by the records of the trial courts of Cook County is that there has been a rapid increase in the size of the verdicts rendered. During the first six months of 1890 three verdicts were rendered in the state courts of Cook County of $10,000 or over; the sum of these three verdicts amounted to $35,240. During the first six months of 1896, 26 verdicts were rendered in these courts, each for an amount equal to or exceeding $10,000; the sum of the 26 verdicts amounted to $425,000. The same scale of increase which applies to these large verdicts applies also to the smaller verdicts.

Selecting for purposes of convenience six of the prominent railroad companies entering Chicago, which have most trouble of this sort to meet, we find that in 1890 these companies, taken together, lost but four verdicts, the sum of the four verdicts being $5,550. During the first six months of 1896, the same railroad companies lost sixteen verdicts, the sum of these verdicts being $143,500.

Other figures ilustrating the same tendency are found in the case of the street railways.

In the first six months of 1890, the three most prominent street railways in Chicago, taken together, lost five verdicts, the sum of these verdicts being $10,050. During the first six months of 1896 the same companies lost 28 verdicts, of which the total amount was $124,012.

The figures which have been given sufficiently indicate the general tendencies of juries in the matter of damages. Specific instances, easy to find, testify to the same fact in a manner even more emphatic.

It is not long since a verdict for $10,000 was almost unknown, and when one of the earlier of these verdicts reached

the Supreme Court of Illinois in 1875, it was promptly reversed. In commenting upon the amount of the judgment, the Court said:

"Ten thousand dollars is a very large sum of money in the possession of which very few can boast. It is a small fortune which few acquire in a lifetime of incessant labor. This the jury awarded to one whose prospects in life do not extend beyond his wages as a day laborer, and who has not been, by the negligence of the defendants, wholly disabled. It is true the company was at fault, but not so greatly as to aggravate it to wilfulness. Compensatory damages were all the jury were justified in awarding under the evidence. A verdict for $10,000 is so enormous as to justify the inference that the jury were actuated by prejudice and passion, not listening to the dictates of cool judgment."

As matters go to-day, $10,000 is by no means a large verdict. The amounts given by juries in Cook County now run as high as $50,000. Forty thousand dollars has been reached in a number of instances, and verdicts for $30,000 and $20,000 are of frequent occurrence.

The third conspicuous fact that we learn from the records of Cook County is that a personal injury suit is practically indefensible.

For the purpose of getting some figures to show the strength of this well recognized tendency of juries, I have taken all cases which were decided by juries in the courts of Cook County during the first six months of 1896. Altogether, after excluding disagreements and cases which were taken from the jury by the court, we find 117 of these cases actually decided by the jury during the period referred to. Of these cases 100 were decided in favor of the plaintiff. Of cases which lasted one day, there were 26, of which 18 resulted in the plaintiff's favor; 28 cases lasted two days, 26 resulting for the plaintiff; 21 cases lasted three days, 20 resulting for the plaintiff; 13 cases lasted four days, 9 resulting for the plaintiff; 9 cases lasted five days, 8 resulting for the plaintiff; 6 cases lasted seven days, all 6 resulting for the plaintiff; 4 cases lasted nine days, 3 resulting for the plaintiff; 1 case lasted thirteen days, and that also went over to the plaintiff.

What the matter was with the seventeen cases which were decided by the jury in favor of the defendant it would not be difficult to learn. They were doubtless most obvious frauds or they were prosecuted by novices. Of the firms regularly engaged in the business, it is no unfrequent boast that for several years not

a single case of this nature has been lost. This tendency is so well recognized that an English judge in the case of Toomey *vs.* Railway Company, said :

"Every person who has had any experience in courts of justice knows very wel that a case of this sort against a railway company could only be submitted to the jury with one result."*

This remark was quoted with approval by Judge Sanford, of New York, in Davis *vs.* Railway, and characterized by him as having been wisely and truly made. He further said :

"I deem it of special importance that this rule (that a verdict should be set aside when against the manifest justice of the case) should be observed in actions for negligence against corporations. . . . . Its more frequent adoption would substantially promote the cause of justice and tend to suppress, in some degree, the alarming increase in the number of purely speculative litigations which the misplaced sympathy of jurors, or unwholsome dread of responsibility on the part of judges, has done much to foster and encourage."†

So much for the possibilities of defence before a jury. It occasionally happens that a new trial is awarded to a defendant, in which event his chance before a jury is probably as good the second time, as it was the first—no better. It sometimes happens that the trial court will reduce the amount of the verdict, but the relief which is thus obtained is comparatively rare and is only exercised in the most flagrant cases. The verdict of the jury when finally rendered terminates the case.

In the upper courts, the finding of the juries upon the facts is frequently the subject of severe criticism ; but notwithstanding this fact, the judgments of the trial courts are affirmed. The rule that the jury alone can be permitted to judge of the preponderance and weight of testimony, is applied in its strictest form; so that if any construction can be put upon the testimony so favorable to the plaintiff that with this construction it can be considered to support a given proposition, the subject must be submitted to the jury for determination, and their finding upon that proposition is regarded as conclusive both in the trial court and in the courts of appeal.

We can see the results of this rule in the Appellate Court, by taking the last five volumes of the reports of that court. In these volumes we find 112 personal injury cases, of which 94

*3 C. B. N. S., 150. †9 J. & S. (N. Y.), 31-35.

were carried up on the defendants' appeal, while in 18 cases only did the plaintiff appeal. In 8 cases out of the 18 the plaintiff was successful in the Appellate Court, an average of pretty nearly fifty per cent., while the defendant succeeded in 32 cases out of 94, an average of thirty-three per cent. In the Appellate Court of the First District, the District which covers Cook County, there were 54 personal injury suits reported in the five volumes mentioned. Of these cases, 43 were carried into the Appellate Court by the defendant, the plaintiff appealing in 11 cases only. Out of the cases carried up by the plaintiff, five resulted in the plaintiff's favor, while out of the 43 cases carried up by the defendant 23 were affirmed and 14 were reversed.

In the Supreme Court the figures are even worse. Taking the last five volumes of the reports of the Supreme Court of Illinois, we find 31 personal injury cases, of which 29 were appealed by the defendant and only 2 cases were taken up by the plaintiff. Out of these 31 cases, 30 cases were affirmed and 1 was reversed, the defendant being successful in the one reversed case.

To give some idea of the situation in other portions of the country I have examined the last five volumes of the Supreme Court reports of Kansas and Texas, where it has been generally supposed that the personal injury speculation was most successful, and the last five volumes of the reports of the Court of Appeals in New York, which might, perhaps, be taken as fairly representative of other portions of the country.

In the Texas reports examined there are 57 personal injury cases, of which 7 were carried up on the plaintiff's appeal and 50 were carried up on the defendant's appeal. In 24 cases only was the judgment of the lower court sustained, while in 33 cases it was reversed, the defendant procuring a reversal of 31 out of 50 appeals, while the plaintiff procured a reversal in 2 out of 7 appeals.

In the Kansas reports there are 62 personal injury cases, of which 51 were carried up on the defendant's appeal and 11 were carried up on the plaintiff's appeal. The number of affirmances and reversals were equal, 31 cases being affirmed and the same number being reversed. Out of the 51 cases appealed by the defendant there were 24 reversals, while the plaintiff succeeded in 7 out of the 11 cases appealed by him.

In the reports of the New York Court of Appeals, disregarding the cases in which no opinion was written, and in which for this reason we are unable to determine the matter in suit, there are 27 personal injury cases, of which 22 were appealed by the defendant and 5 by the plaintiff. Eighteen cases were reversed, the defendant being successful in 15 out of the 22 cases, while the plaintiff succeeded in procuring 3 reversals out of 5 cases.

Such figures as these indicate the serious nature of the situation of personal injury litigation all through the country, and show that the condition of things in Chicago is worse than it is even in such States as Kansas and Texas.

The important facts which the figures quoted show are, in the first place, that a claim for personal injuries is practically sure to result in favor of the claimant; in the second place, that the damages given by the jury will be large; and in the third place, that the Appellate and Supreme Courts of Illinois, at least, are far more to be feared by the defendant than by the claimant.

Under such circumstances as these, the cause of the rapid multiplication of these claims and the increase between 1890 and 1896 in the amount demanded and recovered, is apparent. The growth is inevitable, and will continue so long as the present state of affairs continues. It must not be thought in this connection that any adequate explanation of the figures which I have given is to be found in any corresponding showing in vital statistics. It is not true that there are two and a half times as many accidents nowadays in Cook County as there were six years ago, and that each accident is ten times as serious. The explanation is to be found in the methods by which this speculation is carried on.

The prosecution of personal injury suits has grown to be a business by itself. Those engaged in it rarely have any other occupation. There are several corporations and many law firms and brokers in the city of Chicago, as in other cities, doing a speculative business in these claims. They employ "runners" as a commercial house employs travelling salesmen. These runners have business relations with saloon-keepers near manufacturing works or railway crossings, and surgeons and police officers may be found in many parts of the city having their connection with this business. Sooner or later the runners succeed in obtain-

ing admission to every public hospital in the county. It rarely happens that an accident is mentioned in the newspapers but the unfortunate person who may be injured, or his family in case of his death, is at once overrun with applicants desiring to procure an assignment of the claim. It will be remembered that under a recent decision of the Illinois Supreme Court—a decision which happily the court has again taken under advisement—a personal injury claim is property, capable of being put on the market and transferred from hand to hand, like stock in a corporation. In most cases, the runner who has succeeded in procuring an assignment of the claim has it transferred to some person as trustee. This trustee represents the runner, the saloon-keeper, the hospital nurse, or other person through whom he may have procured the claim, the attorney, surgeons, and other witnesses who may be called upon to testify, and who will, therefore, have a right to share in the proceeds, and, incidentally, the injured person.

Such a system as this is fraudulent throughout, for it is an imposition both upon the plaintiff and upon the defendant.

It is an imposition upon the plaintiff, in the first place, because it offers a direct inducement to the surgeon into whose hands he may have fallen and who is interested in the pecuniary speculation, to aggravate the injury, and what is true of the surgeon, in this respect, is true of all persons who have a money interest in the claim. Let it not be thought, either, that such interest as this is without its effect. In a case with which the writer is familiar, a person who had been injured was treated by the surgeon of the corporation in whose employ he had been. The injury was a serious one. The man was in the company's hospital, and was doing well, when a runner got hold of the injured man's wife and urged a removal from the company's hospital. The surgeons who were in charge of the case stated to the runner and to the woman that the removal would be exceedingly dangerous and probably fatal. The woman, therefore, consented to let the man remain. The runner, however, was not satisfied and very shortly afterward succeeded by his persuasions in bringing the woman back, persisting in the demand for a removal, and finally accomplishing it, with the immediate result feared by the company's surgeons. Cases of murder like this are unusual; but cases where an injured person is attended with a view to testimony and not to treatment are frequent. Unnecessary ampu-

tations or other operations cannot be proved, but there are persons acquainted with the course of matters who believe that they are not unknown.

The system is also an imposition upon the plaintiff in a pecuniary way. The cases are taken, as has been said, upon a contingent fee, which in most instances amounts to one-half of the recovery, although in some cases the competition between runners results in reducing this fee. The expense to the injured person is, therefore, exorbitant. The most highly paid corporate employment does not offer the fees that are paid by these unfortunate individuals, who, by reason of their misfortune, become a part of a pecuniary speculation.

In the second place, the system is an imposition upon the defendant, for it gives rise to dishonest claims, magnifies injuries, and is the source of much false testimony, both on the part of experts and of so-called witnesses to the facts.

"We cannot shut our eyes," said the Appellate Court of the First District in the Loewe case, "to the situation surrounding us, under which witnesses to most important facts make their sudden appearance just on the eve of the trial of personal injury cases. It is not often that their guise is so transparent as in this case."*

A large number of the claims which are presented are claims which are fictitious throughout. A person physically defective, or capable of counterfeiting physical defect, may be made into a claimant with proper instruction, which interested parties are always ready to give. Such cases are constantly coming to light. It was but a few months ago that a railway company discovered evidence by which it showed that a mother and several daughters had been living upon the proceeds of these claims for a number of years. The list of claims which had been successfully prosecuted by these people is astonishing, and the discovery of the conspiracy was largely accidental.

Another corporation involved in this litigation was presented with a person apparently an idiot, his condition being represented as the result of a blow on the head. The company's attorney took the precaution of having his picture taken. No record of the accident could be found, and after the man had left the attorney's office he could not be found.

*58 Ill. App., 606-609.

The picture, however, was sent to all parts of this country and Europe, where information might be expected; detectives were employed in mines in Montana, and in cities on the Atlantic coast, with the final result that the defendant's attorney learned the man's birthplace in Europe, discovered his name upon the army registers, with the record of his physical examination, showing that his condition as a youth had been such as it was when he was presented as a claimant. Correspondence between his confederates was intercepted in Hungary, and finally his original passport was recovered from his family, showing that he had first come to America six months after the date of the accident of which he complained.

Of course no railway or manufacturing firm or corporation can long withstand such assaults as these when they meet with public approval and the support of the courts. A treasury which is open to any adventurer will soon be an empty treasury. And if it be true that neither court nor jury will permit a railway or manufacturing corporation to defend its treasury against such claims, then it is also true that its property is subject to the plunder of every adventurer who sees fit to make a claim, and that its operation cannot continue.

The question whether this enormous and growing evil can be checked is possibly a question of time. It may be that nothing will be done until public attention is drawn to the situation, by some of the larger enterprises being compelled to stop work and grave public inconvenience being thus brought about, but sooner or later, the speculation which has been referred to will lose public support.

The trouble began with the jury, and it is with the jury that we must begin if we are to remove it. The remedy rests with the courts. It is possible for the judges to take as jurors only those men who appear to be able to consider intelligently the questions that will come before them.

It is also possible for the courts to follow the suggestion of Judge Sanford in the case from which we have already quoted, and to see to it that a verdict is set aside when it is against the manifest justice of the case. The more frequent adoption of this rule would substantially "promote the cause of justice and tend to suppress, in some degree, the alarming increase in the number of purely speculative litigations which the misplaced sympathy of

jurors or unwholesome dread of responsibility on the part of judges has done much to foster and encourage." In recent years the tendency of courts has been in the opposite direction.

There are other incidental matters occurring in the progress of a suit in which it is within the power of the courts to do much toward giving the defendant a fair trial. Among these I shall specify but one, and that is, that the plaintiff should be required to state specifically the charge of negligence which he makes and should then be required to stay by that charge. Under the present practice the effort of plaintiff's attorneys is to make the complaint so vague that the defendant will be unable to preserve the evidence which is necessary for its defence.

Most important of all is it, however, that the public should be informed as to the character of these claims and the methods by which they are prosecuted. When public sympathy is withdrawn from such litigation, as it will be when the situation is once known, the attitude of courts and juries will change.

The system of trial by jury as it is now administered—certainly in Chicago, and probably in many portions of the country—has broken down. The immediate result to Chicago, and to all other places in like condition, must be the cessation of manufacturing and industrial activity, whereas those States where the common law on the subject of negligence is recognized and enforced will be benefited by the change.

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